

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2000-2001

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. (There were no vacancies in fiscal year 2000-2001). The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. The Nominating Commission also selects the Chief Justice of Indiana, who serves five-year terms; the current term will end in March, 2002.

Finally, the Nominating Commission certifies former judges as Senior Judges to help Indiana courts with their demanding caseloads. In fiscal year 2000-2001, the Commission recertified seventy Senior Judges, and certified twenty-one new Senior Judges. The Nominating Commission denied certification to three retired or retiring judges, and denied two requests from former judicial officers on the basis they were not former elected or appointed judges.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office, and, when appropriate, prosecutes misconduct cases, which ultimately are

resolved by the Supreme Court. Additionally, the Commission or its staff offers informal or written advisory opinions about judicial ethics.

The Chief Justice of Indiana, the Honorable Randall T. Shepard, is the *ex officio* Chairman of the Commission. Other Commission members serving in fiscal year 2000-2001 were Charles Berger, Esq., Evansville; Linda K. Henderson, Bedford; Karl Mulvaney, Esq., Indianapolis; Benton Marks, Indianapolis; Terrance Smith, Esq., Highland; and Ann Borne, Fort Wayne. New members in 2001 are Theodore Lockyear, Esq., Highland, and John Bartlett, Indianapolis. The three attorney members are elected by other attorneys in their districts, and the three citizen members are appointed by the Governor. The Commission members serve three-year terms. In fiscal year 2000-2001, the Commission met in Indianapolis on six occasions.

In fiscal year 2000-2001, the Judicial Qualifications Commission docketed two hundred fifty-seven complaints or allegations of judicial misconduct. One hundred ninety-nine were summarily dismissed as not raising significant issues of ethical misconduct or as outside the Commission's purview, although, in six of those cases, the Commission suggested to the judges that they amend their conduct in some manner. The Commission inquired into or investigated fifty-eight complaints, requiring in most instances that the judges submit written responses to the allegations. The Commission ultimately dismissed twenty-one of those complaints as not establishing ethical misconduct. Twenty-six of the complaints investigated resulted in confidential warnings to the judges on one or more issues. The Commission issued eight cautions about improper *ex parte* communications; seven cautions about inappropriate judicial demeanor; six about misuse of office; five relating to serious procedural deficiencies; three cautions about delays; three

concerning issues of disclosures or disqualification; and three cautions about improper political activities. Four of these twenty-six confidential resolutions were closed without prejudice to the Commission's ability to raise the issue again if future, similar misconduct occurred.

In fiscal year 2000-2001, the Commission filed formal disciplinary charges in three instances: *Matter of Kern*, Cause No. 47S00-0105-JD-226, *Matter of Spencer*, Cause No. 48S00-0102-JD-137, and *Matter of Funke*, Cause No. 40S00-0102-JD-136. These cases are pending settlement or hearings before panels of three Masters. Additionally, at the end of the fiscal year, three Commission inquiries and four formal investigations were active.

Throughout Fiscal Year 2000-2001, the Commission and its counsel were available to judges and candidates to help them resolve their ethical dilemmas. Counsel responded to over six hundred requests for advice, and the Commission published three formal Advisory Opinions. Opinion #1-00 is about restrictions on law practice of part-time judges in unified courts; Opinion #1-01 pertains to the proper procedure for granting *ex parte* custody orders; and, Opinion #2-01 relates to a provision in the Code of Judicial Conduct which requires judges to obtain approval from the Supreme Court to participate in governmental committees not directly related to the law or the legal system.

Finally, in fiscal year 2000-2001, Commission counsel participated in panel discussions about judicial ethics, met informally with groups of judges and candidates throughout the state to discuss their ethics questions, and represented the Commission at the 17th Annual College of Judicial Conduct and Ethics,

organized by the American Judicature Society's Center for Judicial Conduct Organizations.